* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: 8th February, 2008
Date of Order: 12th February, 2008

+IA No.5920/06 in CS(OS) No.1356/05

% 12.02.2008

Shri Devender Pratap Singh & Another ... Plaintiffs
Through: Mr.A.N. Tiwari, Advocate

Versus

M/s Land Mark Infracon Pvt. Ltd. & Ors. ... Defendants
Through: None

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?

2. To be referred to the reporter or not ?

3. Whether judgment should be reported in Digest ?

ORDER:
IA No.5920/06

1. This application is made by the plaintiff in a disposed of suit under Section 151 CPC for refund of the Court fee paid by the plaintiff. Plaintiff had filed this suit seeking cancellation of sale deed registered as a document no. 6789, Book No.1, Volume No.2033 pages 33 to 49 dated 9.5.2005. When the suit was taken up, it was found that the suit was not maintainable and the plaintiff was told that the suit was not maintainable. Plaintiff sought time on 12th February, 2006 to cite certain judgments to show that suit was maintainable and thereafter on 13th February, 2006, plaintiff's counsel made a statement in the Court that the suit suffers from a technical defect and he wishes to withdraw the suit with liberty to file a fresh suit after removing the objection and stating complete and required facts. The suit was dismissed as withdrawn and liberty was granted.

2. Plaintiff had not filed any fresh suit after removing objection and filed this application for refund of Court fee. There is no provision in law for refund of Court fee where plaintiff seeks to withdraw the suit. It is

settled law that a person who files the suit, must be careful and vigil. The suit must be filed only if there is a cause of action and a right has accrued in favour of the plaintiff. If the suit is filed without cause of action and without there being any right in the plaintiff, the suit is liable to be dismissed. The plaintiff in such a case is not entitled for refund of Court fee. The very purpose of the Court Fee Act is to see that frivolous suits are not filed in the Court and those who file claim must first ascertain their rights carefully and then only levy Court fee. If some one files claim casually without ascertaining his rights, he is bound to suffer the loss of Court fee.

The application is dismissed.

February 12, 2008. **SHIV NARAYAN DHINGRA, J.**
ak